



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

GREENBLUM & BERNSTEIN, P.L.C.
1950 ROLAND CLARKE PLACE
RESTON VA 20191

COPY MAILED

DEC 08 2008

OFFICE OF PETITIONS

In re Patent No. 7,373,295	:	
YASUNAGA et al.	:	LETTER REGARDING PATENT
Issue Date: May 13, 2008	:	TERM ADJUSTMENT AND
Application No. 10/614,834	:	NOTICE OF INTENT TO ISSUE
Filed: July 9, 2003	:	CERTIFICATE OF CORRECTION
Attorney Docket No. P23916	:	

This letter is in response to the "REQUEST FOR CERTIFICATE OF CORRECTION," filed June 10, 2008, which is properly treated as a request that the determination of patent term adjustment under 35 U.S.C. 154(b) be reviewed for accuracy in accordance with patentees' duty of good faith and candor to the Office. Patentees state that the patent term adjustment should be corrected from 832 days to 827 days.

The request for review of the determination of patent term adjustment (PTA) is GRANTED to the extent indicated herein.

Patentee is given **TWO (2) MONTHS** from the mailing date of this decision to respond. No extensions of time will be granted under § 1.136.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised patent term adjustment of **787 days**.

On May 13, 2008, the above-identified application matured into U.S. Patent No. 7,373,295, with a patent term adjustment of 832 days. On June 10, 2008, patentees submitted the instant comment. Patentees assert that they should have been assessed a reduction of 5 days for filing a Request for Continued Examination on September 11, 2007, in excess of the three-month

period from the mailing date of the final Office action pursuant to 37 CFR 1.704(b).

The application history has been reviewed and it has been determined that the number days of applicant delay is incorrect.

A final Office action was mailed on June 6, 2007. Patentees filed their response on September 11, 2007, in excess of the three-month period from the mailing date of the final Office action. See 37 CFR 1.704(b). Thus, patentees failed to engage in reasonable efforts to conclude prosecution of the application. The period of adjustment should have been reduced by 5 days, the number of days in the period beginning on the day after the date that is three months after the date of mailing of the final Office action, September 7, 2007, and ending on the date the reply was filed, September 11, 2007. See 37 CFR 1.704(b). Accordingly, a period of reduction of 5 days will be entered.

Furthermore, patentees should have been assessed a delay pursuant to 37 CFR 1.704(c)(10) for the filing of Information Disclosure Statements on January 4, 2008, and January 10, 2008, after the mailing of the notice of allowance.

37 CFR 1.704 provides:

(c) Circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping.

(10) Submission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of:

(i) The number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or

notice in response to the amendment under § 1.312 or such other paper;

or

(ii) Four months;

In this instance, it is undisputed that patentees filed Information Disclosure Statements on January 4, 2008, and January 10, 2008, after the mailing of the notice of allowance. A review of both Information Disclosure Statements reveals that patentees did not include a statement under 37 CFR 1.704(d)¹ in either IDS. Thus, under the circumstance of this application, the filing of the Information Disclosure Statements on January 4, 2008, and January 10, 2008, are grounds for reduction under 37 CFR 1.704(c)(10).

The Office responded to both Information Disclosure Statements on February 12, 2008. Pursuant to 37 CFR 1.704(c)(10), a first period of reduction of 40 days should have been entered for the IDS filed January 4, 2008, counting the number of days in the period beginning on the date the IDS was filed, January 4, 2008, and ending on the mailing date of the Office action in response, February 12, 2008. Pursuant to 37 CFR 1.704(c)(10), a second period of reduction of 34 days was warranted for the filing of the second IDS on January 10, 2008, counting the number of days in the period beginning on the date the second IDS was filed, January 10, 2008, and ending on the mailing date of the Office action in response, February 12, 2008. 37 CFR 1.704(c) provides that circumstances that constitute a failure of the applicant to

¹ Pursuant to 37 CFR 1.704(d):

A paper containing only an information disclosure statement in compliance with §§ 1.97 and 1.98 will not be considered a failure to engage in reasonable efforts to conclude prosecution (processing or examination) of the application under paragraphs (c)(6), (c)(8), (c)(9), or (c)(10) of this section if it is accompanied by a statement that each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart application and that this communication was not received by any individual designated in § 1.56(c) more than thirty days prior to the filing of the information disclosure statement. This thirty-day period is not extendable.

engage in reasonable efforts to conclude processing or examination of an application ... will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping. The second period of reduction of 34 days pursuant to 37 CFR 1.704(c)(10) totally overlaps with the first period of reduction of 40 days.

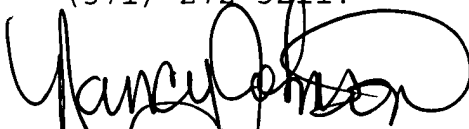
Accordingly, a single period of reduction of 40 days is being entered for these two periods of reduction.

In view thereof, the patent should have issued with a revised patent term adjustment of 787 days (832 days of Office delay - 45 days of applicant delay).

As this letter was submitted as an advisement to the Office of an error in patentee's favor, the Office will not assess the \$200.00 fee under 37 CFR 1.18(e). The Office thanks patentees for patentees' good faith and candor in bringing this to the attention of the Office. Furthermore, the \$100.00 certificate of correction fee is unnecessary and will be refunded to patentees' credit card.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by 787 days.

Telephone inquiries specific to this matter should be directed to Christina Tartera Donnell, Senior Petitions Attorney, at (571) 272-3211.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,373,295 B2

DATED : May 13, 2008

INVENTOR(S) : Yasunaga et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (832) days

Delete the phrase "by 832 days" and insert – by 787 days--